

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 292 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AJIT JANAKLAL JAISWAL @ DOCTOR

Versus

STATE OF GUJARAT

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Appearance:

MR BS PATEL for Petitioners

MR SP DAVE, APP for Respondent No. 1

MR AS DAVE for respopndent No.2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/09/1999

CAV JUDGEMENT

1. Heard Mr. B.S. Patel, learned advocate for the revisioner and Mr. Trivedi, learned Additional Public Prosecutor for the respondents.

2. Rule. Mr. Trivedi waives service of Rule.  
Considering the circumstances and at the request of learned advocates for the parties, the matter is taken up for final hearing.

3. The revisioners herein are original accused Nos.1, 5 and 6 in NDPS Case No.8 of 1998 pending before the learned Additional Sessions Judge, at Vadodara. During the course of the trial, the revisioners tendered Application Ex.53 on 17.5.1999 stating that they have not been supplied with a copy of the report of the Forensic Science Laboratory, which is an important piece of evidence against them and the same would be necessary even for making out a case for discharge. The learned Additional Sessions Judge passed the following order :-

"Other side to comply or reply.

17-5-99 Sd/

Additional Sessions Judge,  
Vadodara."

4. The revisioners seek the following reliefs :-

9. The applicants therefore humbly pray  
that:-

A. Your Lordships be pleased to call for R&P of the NDPS Case No.8/98 from the court of learned Additional Sessions Judge, Vadodara and after perusing the order passed below Ex.43 dated 17.5.99, be pleased to quash and set aside the same.

B. Your Lordships be pleased to peruse the legality and propriety of the proceedings of the NDPS Case No.8/98 from the court of learned Additional Sessions Judge, Vadodara and be pleased to direct the learned Sessions Judge to conduct the trial or entrust it to any Senior Additional Sessions Judge.

C. During the pendency and final disposal of the present application, Your Lordship be pleased to stay further proceedings of the NDPS Case No.8/98 pending in the court of learned Additional Sessions Judge, Vadodara.

D. Your Lordships be pleased to dispense with the affidavit as the applicants are in judicial custody.

E. Your Lordship be pleased to grant any

other appropriate and just relief/s which may be deemed just and necessary in the present case."

5. Mr. B.S. Patel, learned advocate for the revisioners, during the course of argument submitted that the revisioners had tendered application Ex.53 on 17.5.1999, requesting for supply of copy of the F.S.L. report to facilitate the revisioners to tender an application for discharge. The learned Additional Sessions Judge was pleased to direct the other side to comply with or reply. But the learned Additional Sessions Judge neglecting the important right of the accused for praying for discharge, framed the charge on that very day at Ex.43 and, therefore, the charge framed may be quashed. He has also urged that the learned Additional Sessions Judge may be directed to conduct this matter either himself or to entrust this to a seasoned Additional Sessions Judge. In support of his case, Mr. Patel has placed reliance on the decision in the case of *Nga Ba Din v. Emperor*, A.I.R. 1935 Rangoon 406.

6. It is also contended by Mr. Patel that the learned Additional Sessions Judge has framed charge under Section 120-B of Indian Penal Code, although even according to the prosecution case, there is no such allegation.

7. Mr. Trivedi, learned Additional Public Prosecutor appearing for the respondents submitted that before the Trial Court, subsequent to the framing of charge, the trial has already commenced and witnesses have been examined and, therefore, if the charge framed at Ex.43 is quashed and set aside, the entire trial and exercise would be rendered futile. He submitted that if, at the end of the trial, there is no evidence as to conspiracy, the revisioners would be acquitted of the offence. If there is no evidence at this stage and if the witnesses come with an improved version, the revisioners will get benefit thereof and above all Mr. Trivedi submitted that the prosecution report under section 173 of the Code of Criminal Procedure, which is relied upon by the revisioners, is only a report and it is upto the Court to decide as to how the charge is to be framed and under what provisions and, therefore, merely because there is absence of mention of Section 120-B of Indian Penal Code in the report made by the Investigating Officer, the charge cannot be rendered defective. Mr. Trivedi submitted that in a series of acts which can be considered as one and the same transaction the accused have undertaken any illegal activity of supplying and

using Acetic Anhydride for manufacture of huge quantities of mandrax tablets and, therefore, there is no defect in the charge.

8. Considering the rival side contentions, each of the contentions raised by the revisionist has to be dealt with separately. The first request is for quashing the charge that is framed at Ex.43. After the charge was framed, the matter has proceeded further and witnesses have been examined. This aspect is undisputed. It is contended that, despite request having been made by the accused persons that they need copy of the Forensic Science Laboratory's report for tendering an application for discharge, charge is framed. Under the circumstances, the accused have lost a valuable right of praying for discharge, requesting the Court to exercise powers under section 227 of the Code of Criminal Procedure. Record and proceedings were called for from the Trial Court to ascertain as to whether there is any mistake in Exhibit number of the charge and the application praying for supply of copy of F.S.L. report. The charge is at Ex.43 and the application is at Ex.53 and, therefore, this fact was found to be not in harmony with the contention raised that despite application having been given for supply of F.S.L. report to enable the accused to give an application for discharge under Section 227 of Code of Criminal Procedure, the charge was framed. On inspection of record, it is found that the exhibit numbers are correct. Rojkam also indicates that there is no mistake in giving of exhibits. It was, therefore, put to the learned advocate Mr. Patel as well as learned Additional Public Prosecutor and they could not tender any satisfactory or plausible explanation to this. There are no erasers or over writing in the Rojkam and, therefore, although it is contended that application Ex.53 was given prior to framing of charge, the contention does not seem to be well founded and derives no support from the record. And the revision application cannot, therefore, be entertained on this count.

9. However, the fact remains that copy of the F.S.L. report was not supplied prior to framing of charge. In this view of the matter, in order that the revisioners' right is protected and that the exercise done up-till-now may not be rendered futile, if liberty is granted to revisioners to tender an application before the learned Trial Judge for modification of the charge on basis of contents of the F.S.L. report and the learned Trial Judge considers the same and passes an appropriate order in accordance with law, then the interest of justice would be served. The revisioners would be entitled to tender an application for modification of the charge

only, repeat, only on basis of the F.S.L. report as they already had other papers of the prosecution on which the prosecution relied upon when the charge was framed and, therefore, the request for quashing the charge is not required to be entertained as the interest of revisioners would be protected by these directions.

10. It was argued by Mr. Patel that the learned Sessions Judge has framed charge under Section 120B of Indian Penal Code, which is not the case of the prosecution at all. The offence under Section 120B of Indian Penal Code is a separate offence. Mr. Trivedi, learned Additional Public Prosecutor tried to justify this framing of charge. However, it seems that there is no case of offence punishable under Section 120B of Indian Penal Code in the papers relating to the prosecution. It also transpires that charge under Section 29 of NDPS Act has been framed. In this view of the matter, the charge framed under Section 120B needs to be deleted from the charge framed by the learned Sessions Judge.

11. The revisioners have come with another request for directing the learned Additional Sessions Judge, Vadodara to conduct the trial himself or to entrust it to any senior Additional Sessions. In this regard, reliance is placed on the decision in the case of Nga Ba Din v. Emperor, AIR 1935 Rangoon 406 (supra), wherein it has been observed as under :-

"The original trial was held by the Additional Sessions Judge, so that retrial should be held by the Sessions Judge himself, and we would note that a case of this kind should have been dealt with by the Sessions Judge himself in the first instance. It is the type of case which is of some difficulty and the learned Sessions Judge should arrange that cases out of the ordinary routine which contain difficulty should be tried by himself and not made over to a less experienced Additional Sessions Judge."

12. In this regard, this Court is not inclined to pass any orders, as the trial has already begun. This Court may not be otherwise taken to have rejected this request and it would be open for the revisioners to move the learned Sessions Judge seeking appropriate relief and, if such an application is made, the learned Sessions Judge shall decide the same in accordance with law without being influenced by any observation made hereinabove in this regard.

13. In this view of the matter, the petition shall stand partly allowed. The charge framed by learned Additional Sessions Judge in NDPS Case No.8 of 1998, at Ex.43 shall stand modified to the effect that the charge framed under Section 120B of Indian Penal Code shall stand deleted. It would be open to the revisioners to apply to the trial Court for modification of charge Ex.43 on basis of contents of F.S.L. report alone within four weeks from date of this order. If such application is made, the same shall be decided by the trial Court after hearing all concerned in accordance with law, expeditiously. Rest of the prayers sought in the petition stand rejected. Rule is made absolute to the above extent.

[ A.L. DAVE, J. ]

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